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Maravilla v. J.R. Simplot Company Respondent's Brief Dckt. 43538

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOSEPH JERRY MARAVILLA Claimant/Respondent/Cross-Appellant, vs. J.R. SIMPLOT COMPANY, Defendant/Appellant/Cross-Respondent.	**Supreme Court Docket No. 43538**

RESPONDENT'S/CROSS-APPELLANT'S BRIEF BY CLAIMANT MARAVILLA

Appeal from the Industrial Commission of the State of Idaho

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I. STATEMENT OF THE CASE

A. NATURE OF THE CASE

This appeal arises from the Industrial Commission's Order on Petition for Declaratory Ruling ("Order"). It is anticipated that all injured workers with third-party claims, self-insured employers, and worker's compensation insurance companies will be anxiously awaiting the decision from this appeal.

In Idaho, there is no question that an injured employee may receive worker's compensation benefits and also bring a separate negligence suit against a third-party tortfeasor. For 50 years the Idaho Supreme Court has held that when an employer's negligence contributes to an employee's injuries, neither the employer nor his surety may obtain reimbursement for worker's compensation benefits from an employee who recovers damages from a third-party tortfeasor. *See, e.g. Izaguirre v. R&L Carriers Shared Servs.*, LLC, 155 Idaho 229, 235, 308 P.3d 929, 935 (2013); *Tucker v. Union Oil Co. of California,* 100 Idaho 590, 603, 603 P.2d 156, 169 (1979). This treatment of employer subrogated claims has remained unchanged by the Idaho Supreme Court and the Idaho Legislature.

This appeal filed by Claimant Joseph Jerry Maravilla ("Maravilla") involves this employer negligence rule. In direct contravention of this well-established rule, the Industrial Commission's Order, from which this appeal arises, declares that an employer may now receive a reimbursement from an employee who recovers damages from a third-party tortfeasor *even if the employer's negligence contributed to the employee's injuries*. This appeal is brought to remedy the Industrial Commission's disregard of unambiguous Idaho Supreme Court case law.

B. STATEMENT OF THE FACTS

1. The Underlying Accident

In or about September 2011, the J.R. Simplot Company ("Simplot") entered into a contract with Idaho Industrial Contractors, Inc. ("IIC") to repair a sulfuric acid pad located at the Simplot facility.[1] Simplot and IIC entered into a Health and Safety Plan ("HASP") which identified project hazards.[2] As part of this repair project, a hose was placed from the sulfuric acid pad and across an adjacent walkway to transport the acid from the pad to a nearby pump.[3]

On the day of the accident, a rain event caused a power surge which resulted in a power outage at the sulfuric acid pad.[4] Sulfuric acid flooded pad. Maravilla, who was employed by Simplot, was instructed by a supervisor to investigate and correct the problem.[5] The time was nearing dusk.[6] There were no IIC employees present at this time.[7]

While walking down the walkway adjacent to the sulfuric acid pad, Maravilla tripped on the hose that had been placed there.[8] His foot punctured a plastic barrier erected by IIC and went into the sulfuric acid six inches deep.[9] Maravilla suffered severe chemical burns to his foot and leg, which later required skin grafts and extensive surgery.[10]

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[1] R., pp. 22-25.
[2] R., pp. 54, 63.
[3] R., pp. 57, 59.
[4] R., p. 156.
[5] R., p. 82.
[6] R., p. 82.
[7] R., p. 56.
[8] R., pp. 83-86.
[9] R., pp. 83, 86.
[10] R., p. 86.

2. The Lawsuit against IIC

Maravilla filed a third-party lawsuit against IIC, alleging that its conduct with respect to the sulfuric acid pad, including but not limited to placing the hose across the walkway, had resulted in his injuries.[11] Simplot was not a party to the lawsuit.

Maravilla initially believed that IIC had placed the hose across the walkway.[12] During this litigation, a Simplot manager admitted that other Simplot employees had actually placed the hose on the walkway.[13] Maravilla continued pursuing the lawsuit based upon IIC's other negligent conduct with respect to the sulfuric acid pad. IIC hired Tara Henricksen, a chemical engineer and safety expert, to review the accident.[14] In her report, she determined that Simplot had negligently failed to have appropriate hazard controls such as diverting the acid entirely away from this area.[15] She also determined that Simplot was also negligent in failing to remove the tripping hazard presented by the hose.[16] Ultimately, IIC paid $75,000 to settle the case.[17] This was far less than Maravilla's total damages.[18]

C. COURSE OF PROCEEDINGS BELOW

Maravilla filed a timely worker's compensation complaint with the Industrial Commission. Simplot paid worker's compensation benefits in its capacity as a self-insured employer. Based on

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[11] R., p. 156.
[12] R., p. 83.
[13] R., Aug 01.
[14] R., pp. 93, 101-02.
[15] R., p. 99.
[16] R., p. 99.
[17] R., p. 113.
[18] R., p. 113.

I.C. § 72-223(3), Simplot sought subrogation against the $75,000 obtained by Maravilla in settlement with the third-party tortfeasor IIC.

On May 1, 2015, Maravilla filed a Petition for Declaratory Ruling with the Industrial Commission, seeking reaffirmation of the Idaho Supreme Court's well-established employer negligence rule prohibiting an employer from seeking reimbursement for worker's compensation benefits paid when the employer's own negligence contributed to the employee's injuries.[19] *See Izaguirre*, 155 Idaho at 235, 308 P.3d at 935; *Tucker,* 100 Idaho at 603, 603 P.2d at 169. Maravilla sought this ruling in order to establish the legal framework for the hearing on Simplot's subrogation claim. If the employer negligence rule applied, the primary issue would be Simplot's negligence in regard to the enforceability of Simplot's subrogated claim, and Maravilla would be required to put on proof of Simplot's negligence, including documents, witnesses and experts. If, contrary to Idaho law, a partial subrogated claim scheme were to be used by the Commission a far more complicated hearing would occur with more experts. Hence, Maravilla filed the Petition at issue here.

Simplot responded by arguing in part that Maravilla was precluded by the doctrine of claim preclusion from raising the issue of its negligence as a means of challenging its right to subrogation under I.C. § 72-223(3).[20] Simplot argued that the doctrine of claim preclusion required that Maravilla establish Simplot's negligence during the third-party tortfeasor case against IIC and that,

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[19] R., pp. 1-17.
[20] R., p. 129.

because Maravilla settled the case without establishing Simplot's negligence, Maravilla was precluded from subsequently doing so before the Industrial Commission.[21]

On August 11, 2015, the Industrial Commission issued an Order on Petition for Declaratory Ruling.[22] In its Order, the Commission rejected Simplot's claim preclusion argument.[23] The Commission also rejected the Idaho Supreme Court's well-established employer negligence rule and, in direct contravention thereof, held than an employer was entitled to reimbursement *even if the employer's negligence contributed to the employee's injuries.*[24]

Simplot appealed from this final Order with respect to the claim preclusion issue.[25] Maravilla filed a cross-appeal with respect to the Industrial Commission's disregard of the Idaho Supreme Court's well-established employer negligence rule.[26] Both issues will be addressed in this brief, which serves as Maravilla's Respondent's Brief and Cross-Appellant's Brief. Maravilla reserves the right to reply to Simplot's Cross-Respondent's Brief at a time set by this Court.

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[21] R., pp. 130-31.
[22] R., pp. 155-72. The last sentence of the Order states: "Per J.R.P. 15(f)(3), this declaratory ruling has the full force and effect of a final order or judgment under Idaho Code § 72-218." R., p. 171.
[23] R., pp. 169-70.
[24] R., pp. 169-70.
[25] R., pp. 173-76.
[26] R., pp. 177-79.

II. ISSUES PRESENTED ON APPEAL

1. Whether the Industrial Commission correctly determined that claim preclusion does not apply in this case and did not preclude Maravilla from challenging Simplot's subrogation claim based upon its negligence.
2. Whether the Industrial Commission's disregard of the well-established Idaho Supreme Court's employer negligence rule requires reversal of the Commission's Order.

III. STANDARD OF REVIEW

"When reviewing a decision by the Industrial Commission, this Court exercises free review over the Commission's conclusions of law, but will not disturb the Commission's factual findings if they are supported by substantial and competent evidence." *Kelly v. Blue Ribbon Linen Supply, Inc.*, ___ Idaho ___, 360 P.3d 333, 335 (2015) (quoting *Knowlton v. Wood River Med. Ctr.*, 151 Idaho 135, 140, 254 P.3d 36, 41 (2011)); *see also* I.C. § 72-732. The two issues on appeal involve only conclusions of law. Therefore, this Court exercises free review.

IV. ARGUMENT

A. THE INDUSTRIAL COMMISSION CORRECTLY DETERMINED THAT CLAIM PRECLUSION DOES NOT APPLY IN THIS CASE AND DOES NOT PREVENT MARAVILLA FROM CHALLENGING SIMPLOT'S SUBROGATION CLAIM BASED UPON ITS NEGLIGENCE.

Maravilla filed a third-party tort case against IIC. In that tort case, IIC raised the issue of Simplot's negligence. Because the tort case was resolved by settlement agreement, there was no jury verdict establishing Simplot's negligence. Maravilla intends to now assert Simplot's negligence before the Industrial Commission as a bar to Simplot's subrogation claim under I.C. § 72-223(3). Claim preclusion only applies if (1) the parties in both actions are the same; (2) the claims were the same in both actions; and (3) there was a final judgment in the first action. Simplot was not a party, nor a privity to a party, in the third-party tort case against IIC. The claim now before the Industrial Commission is Simplot's subrogated claim which is not the same claim asserted in the tort case. And Simplot was not a party to the settlement agreement in the tort case. Did the Industrial Commission correctly determine that claim preclusion does not apply in this case and does not prevent Maravilla from challenging Simplot's subrogated claim based upon its negligence? The answer is yes.

Maravilla is not precluded by claim preclusion from proving Simplot's negligence before the Industrial Commission as a means of limiting Simplot's subrogation claim under I.C. § 72-223(3). "For claim preclusion to bar a subsequent action there are three requirements: (1) same parties; (2) same claim; and (3) final judgment." *Ticor Title Co. v. Stanion*, 144 Idaho 119, 124, 157 P.3d 613, 618 (2007). Claim preclusion does not apply in this case, because Simplot was not a party or in privity with a party to the settlement agreement in the prior IIC lawsuit, because the same claim now before the Industrial Commission was not litigated in the prior IIC lawsuit, and because there was no final judgment or settlement agreement in the prior IIC lawsuit to which Simplot was a party.

1. Simplot was not a party or in privity with a party to the settlement agreement in the prior IIC lawsuit.

"In order for claim preclusion to apply, both proceedings must involve the same parties or their privies." *Ticor,* 144 Idaho at 124, 157 P.3d at 618. It is undisputed that Simplot was not an

actual party in the prior IIC lawsuit. Simplot is therefore left to argue that it was in privity with a party in that prior IIC lawsuit. As will be discussed, this argument fails.

"To be privies, a person not a party to the former action must derive[] his interest from one who was a party to it, that is, . . . he [must be] in privity with a party to that judgment." *Id.* (internal citation and quotation marks omitted). Individuals and entities are privies only if their interests are aligned. Individuals and entities are not privies if their interests are adverse to each other. *See, e.g.*, *Id.* ("Ticor was not in privity with any party to the bankruptcy proceeding [because] his interests were adverse to both Stanion and the bankruptcy trustee.").

The Idaho Supreme Court has held that a bankruptcy creditor is in privity with a bankruptcy trustee and therefore bound by any stipulations executed by the trustee, because a bankruptcy trustee is generally tasked with acting on behalf of bankruptcy creditors. *See Farmers Nat'l Bank v. Shirey*, 126 Idaho 63, 878 P.2d 762 (1994). They are in privity, because their interests are legally aligned.

There are times when individuals and entities are not in privity, because their interests are not aligned. For example, the Idaho Supreme Court has held that an insurance company is not in privity with an insured and therefore is not bound by settlement agreements executed by its insured in a lawsuit against a tortfeasor, because interests of the insurance company and the insured are not aligned. *See Struhs v. Prot. Techs.,* 133 Idaho 715, 721, 992 P.2d 164, 170 (1999) (citing *Anderson v. Farmers Ins. Co. of Idaho,* 130 Idaho 755, 757, 947 P.2d 1003, 1005 (1997); *Vaught v. Dairyland Ins.* Co., 131 Idaho 357, 361, 956 P.2d 674, 678 (1998)).

The relationship between Simplot and Maravilla is identical to the relationship between the insurance company and the insured, which is not a relationship in privity. This is not difficult to

understand given that Simplot was self-insured and this appeal involves Simplot's claim for reimbursement under that insurance.

The Idaho Supreme Court addressed this very issue in *Struhs*, 133 Idaho at 721, 992 P.2d at 170. In that case, Struhs worked for American Protective Services (APS). A member company of Wausau Insurance Companies (Wausau) provided worker's compensation coverage. Struhs was involved in a motor vehicle accident in the course of work when struck by an Army vehicle. Ultimately, Struhs and the Army reached a settlement where the Army paid Struhs $45,000 in full satisfaction of his third-party tortfeasor claims against the Army. *Id.* at 717, 992 P.2d at 166. Wausau demanded $21,127 from the settlement proceedings as reimbursement for the worker's compensation benefits it had provided to Struhs. *Id.* at 718, 992 P.2d at 167. On appeal, Struhs argued that "the terms of his settlement agreement with the Army, which characterized the recovery as 'general damages,' barred Wausau from recovering reimbursement from the settlement monies." *Id.* at 721, 992 P.2d at 170. The Idaho Supreme Court held that Wausau was not bound by the terms of the settlement, because Struhs and Wausau were not in privity with regard to the settlement agreement in the third-party tort case:

> It is a matter of first impression before this Court whether **an agreement** between a third-party tortfeasor and an injured employee can restrict the employer's subrogation rights.... **Employers have a statutory right to subrogation, and any characterization of damages to which the employer is not privy cannot change the employer's statutory rights.** A contrary holding could lead to situations where employees and third-party tortfeasors reached unilateral agreements that would give the employee a double recovery or result in the culpable party not shouldering its full responsibility for damages--results that would be diametrically opposed to the purposes of the subrogation statute.... Therefore, we hold that an employee and third party's unilateral actions cannot restrict an employer's subrogation rights.

Id. (emphasis added). This legal principle, which applies to settlement agreements between a third-party tortfeasor and an injured employee, was quoted and reaffirmed by the Idaho Supreme Court in 2013 in *Izaguirre*, 155 Idaho at 235, 308 P.3d at 935.[27]

From *Struhs*, it is settled that an employee and an insurance company providing worker's compensation coverage are not in privity with regard to settlement agreements between an injured employee and a third-party tortfeasor. Therefore, Simplot, as a self-insured company, was not in privity with Maravilla with regard to Maravilla's settlement agreement with IIC. Because Simplot and Maravilla were not in privity, claim preclusion does not apply. For this reason alone, the Industrial Commission's rejection of Simplot's claim preclusion argument should be affirmed.[28]

2. The same claim now before the Industrial Commission was not pursued or litigated in the prior IIC lawsuit.

The claim asserted by Maravilla in the third-party lawsuit was a negligence tort claim against IIC. In the present Industrial Commission case, Simplot is asserting a claim for subrogation

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[27] In its brief, Simplot cites *Runcorn v. Shearer Lumber Prods.*, 107 Idaho 389, 396, 690 P.2d 324, 330 (1984) for the proposition that an employee and an employer are bound by the "outcome resulted from the third party suit." (See Appellant's Brief at 7). This is a misrepresentation of *Runcorn*'s holding. Unlike Maravilla's tort lawsuit, the tort lawsuit in *Runcorn* ended in a jury verdict following a trial. In addressing the issue of double recovery and an employer's subrogation claim, the Idaho Supreme Court held in *Runcorn* that an employee and an employer are "**bound...to the results of that trial.**" *Id.* (emphasis added). Because Maravilla's case involves a settlement agreement and not a jury verdict resulting from a trial, this language from *Runcorn* is inapplicable. Instead, as discussed above, this case is governed by the holding in *Struhs* which specifically addressed the effect of a settlement agreement, rather than a jury verdict, upon an employer's subrogation rights under I.C. § 72-223(3).

[28] Although the Industrial Commission's rejection of Simplot's claim preclusion argument was based upon other reasoning, the Idaho Supreme Court may affirm the Industrial Commission's rejection on alternate grounds. *See Martel v. Bulotti*, 138 Idaho 451, 453, 65 P.3d 192, 194 (2003) ("This Court may uphold decisions on alternate grounds from those stated in the findings of fact and conclusions of law on appeal.").

under I.C. § 72-223(3). These are separate and distinct claims. This is made clear by the fact that Simplot's subrogation claim doesn't even come into existence until after the tort claim is fully litigated or settled. And this Court has specifically stated that the Industrial Commission has "exclusive jurisdiction to determine the subrogation rights of the SIF where a worker also recovers from a third party." *Williams v. Blue Cross of Idaho*, 151 Idaho 515, 519, 260 P.3d 1186, 1189 (2011); *Van Tine v. Idaho State Insurance Fund*, 126 Idaho 688, 690, 889 P.2d 717, 719 (1994). Because these are separate and distinct claims, the doctrine of claim preclusion does not apply in this case.

It is true that both claims peripherally involve the issue of Simplot's negligence. In the third-party tort case, IIC raised it as a defense. Before the Industrial Commission, Maravilla is raising it as a defense to Simplot's subrogation claim. Maravilla is not precluded by claim preclusion from raising this issue before the Industrial Commission. Issues such as this are the subject of issue preclusion and not claim preclusion. The Appellant's Brief makes no argument and presents no authority with regard to issue preclusion. All arguments based on issue preclusion are therefore waived on appeal. *Martin v. Smith*, 154 Idaho 161, 164, 296 P.3d 367, 370 (2013) (quoting *State v. Zichko*, 129 Idaho 259, 263, 923 P.2d 966, 970 (1996)). Notwithstanding, issue preclusion does not apply in this case because the issue of Simplot's negligence was not fully and fairly litigated in the third-party tort case. *Ticor Title Co.*, 144 Idaho at 124, 157 P.3d at 618 ("the issue sought to be precluded was actually decided in the prior litigation").

Based upon existing case law, one must agree that a subrogation claim under I.C. § 72-223(3) is exclusively within the Industrial Commission's jurisdiction and authority. It therefore cannot be credibly argued that the Commission does not have jurisdiction and authority to

determine all facts relevant to that subrogation claim, including whether the employer was negligent. This is especially true where fault was not determined by jury verdict in the third-party tort case. Certainly, every injured employee cannot be required obtain a jury verdict in all third-party tortfeasor cases before pursuing their worker's compensation cases. Not only would this result in untimely and slow claims, it would also thwart the public policy favoring the settlement of litigation. *Hill v. American Family Mut. Ins. Co.*, 150 Idaho 619, 627, 249 P.3d 812, 820 (2011).

Simplot is now asserting its subrogated claim in this action and is claiming it is entitled under I.C. § 72-223(3) to reimbursement from the $75,000.00 obtained by Maravilla from its settlement with IIC. The doctrine of claim preclusion does not preclude Maravilla from raising the employer negligence rule as a defense and challenging Simplot's claim to subrogation by reason of its own negligence. The Commission's rejection of Simplot's claim preclusion argument should be affirmed.

3. There was no final judgment involving Simplot in the prior IIC lawsuit.

Maravilla does not disagree that a settlement agreement generally satisfies the final judgment requirement of claim preclusion. However, the party seeking to rely upon claim preclusion must have been a party to the settlement agreement. Simplot was not a party to the settlement agreement in the prior IIC lawsuit. Nor was Simplot in privity with any party to the settlement agreement in the prior IIC lawsuit. Because there was no final judgment or settlement

agreement involving Simplot in the prior IIC lawsuit, the Industrial Commission's rejection of Simplot's claim preclusion argument should be affirmed.[29]

B. THE INDUSTRIAL COMMISSION'S DISREGARD FOR THE WELL-ESTABLISHED IDAHO SUPREME COURT'S EMPLOYER NEGLIGENCE RULE REQUIRES REVERSAL OF THE INDUSTRIAL COMMISSION'S ORDER.

For five decades the Idaho Supreme Court has consistently held that an employer, whose negligence contributes to an employee's injuries, may not obtain reimbursement from the award obtained by the employee from a third-party tortfeasor. Did the Commission commit reversible error when it declared as a matter of law that an employer may obtain reimbursement from an award obtained by an employee from a third-party tortfeasor, *even when the employer's negligence contributes to the employee's injuries*? The answer is yes.

1. The history of the employer negligence rule.

Idaho's employer negligence rule can be traced all the way back to a case decided by the Idaho Supreme Court 50 years ago. In *Liberty Mutual Insurance Company v. Adams*, 91 Idaho 151, 417 P.2d 417 (1966), the Idaho Supreme Court quoted with approval the following rule:

> ...when the employee or his estate has been satisfied, and the employer seeks to recover the amount paid by him, from such third party, his hands ought not to have the blood of the dead or injured workman upon them, when he thus invokes the impartial powers and processes of the law.

Id. at 156, 417 P.2d at 422 (quoting *Witt v. Jackson*, 366 P.2d 641 (Cal. 1961)). In *Liberty Mutual*, the Supreme Court also quoted with approval the following:

> whether an action is brought by the employer or the employee, the third party tortfeasor should be able to invoke the concurrent negligence of the employer to defeat its right to reimbursement, since, in either event, the action is brought for the benefit of the employer to the extent that compensation benefits have been paid to the employee.

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[29] This appears to be supported by the holding in *Struhs* that an employer was not bound by the terms of a settlement agreement between an injured employee and a third-party tortfeasor.

Id. at 156, 417 P.2d at 422 (quoting *Witt*, 366 P.2d 641). This rule is premised on the principle that neither the employer nor his insurance carrier should profit by the wrong of the employer. *Id.* ("It is contrary to the policy of the law for the employer, or his subrogee, the insurance carrier, to profit by the wrong of the employer.")

The Idaho Supreme Court reaffirmed the employer negligence rule in *Tucker v. Union Oil Co. of California,* 100 Idaho 590, 603 P.2d 156 (1979):

> The Court held [in *Liberty Mutual*] that when an employer's negligence, together with the negligence of a third party nonemployer tortfeasor, concurrently contributed to the injury of an employee, neither the employer no[r] his surety may obtain reimbursement for workmen's compensation benefits from an employee who recovers damages from a third party tortfeasor.

Id. at 603, 603 P.2d at 169. The Supreme Court has continued to reaffirm the employer negligence rule in many subsequent cases. *See, e.g., Schneider v. Farmers Merchant*, 106 Idaho 241, 243, 678 P.2d 33, 36 (1983); *Runcorn v. Shearer Lumber Products, Inc.*, 107 Idaho 389, 395, 690 P. 2d 324, 330 (1984).

The most recent reaffirmation of the employer negligence rule was in the 2013 case of *Izaguirre v. R&L Carriers Shared Servs., LLC*, 155 Idaho 229, 308 P.3d 929 (2013), where the Idaho Supreme Court again stated:

> In those situations where the employer is not negligent, the employer is entitled to subrogate to the employee's recovery against a third party, and thus obtain a reimbursement of the workmen's compensation benefits he paid. Conversely, in those situations where the **employer is negligent, the employer is denied this reimbursement**....

Id. at 235, 308 P.3d at 935 (emphasis added) (quoting *Schneider*, 106 Idaho at 243, 678 P.2d at 36). In its 50-year history, the employer negligence rule has never been altered or amended by either the Idaho Supreme Court or the Idaho Legislature.

2. The Commission not only ignored well-established Idaho Supreme Court case law in rejecting the employer negligence rule but also failed to apply correct rules of statutory construction as the basis in doing so.

"The objective of statutory interpretation is to give effect to legislative intent" at the time of the statute's enactment. *State v. Olivas*, 158 Idaho 375, 379, 347 P.3d 1189, 1193 (2015). This is accomplished by considering "not only the literal words of the statute, but also the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history." *Id.* (citation omitted).

Idaho Code § 72-223(3) was enacted in 1971. Idaho Code § 72-223(3) does not expressly set forth a system of apportionment of an award obtained by an employee against a third-party tortfeasor. The system of apportionment, including the employer negligence rule, was formulated by the Idaho Supreme Court over 50 years ago through proper statutory interpretation of I.C. § 72-223(3) and consideration of the reasonableness of proposed constructions, the public policy behind the statute, and its legislative history. *See, e.g., Schneider*, 106 Idaho at 243, 678 P.2d at 35 ("Our system of apportionment has foundation in I.C. § 72-223(3). We summarized our interpretation of this section in *Tucker*"). There is no question that in performing this statutory interpretation of I.C. § 72-223(3), the Supreme Court properly focused upon the legislative intent at the time of the statute's enactment.

In its Order, the Commission acknowledged the correctness of the Supreme Court's 50-year-old statutory interpretation of I.C. 72-223(3) that "any fault on the part of the employer, regardless of how minimal, is an absolute bar to employer's right of subrogation to the proceeds

of an injured worker's recovery against a negligent third party."[30] Notwithstanding, the Commission decided in its Order to consider "whether the Legislature's abolition of joint and several liability [in 1987] demands modification of the rule that any negligence on the part of the employer constitutes a complete bar to the employer's exercise of its rights of subrogation to the Claimant's recovery against the negligent third party."[31]

This question posed by the Commission in its Order is really asking what the intent of the Idaho Legislature was with respect to the Idaho Supreme Court's 50-year-old interpretation of I.C. § 72-223(3) when the Idaho Legislature amended I.C. § 6-803 in 1987 abolishing joint and several liability. The answer to this question requires consideration of the legislative intent in 1987 with respect to the amendment of I.C. § 6-803. Notwithstanding, the Commission made no effort to consider the legislative history of the 1987 amendment.

When the Idaho Legislature made its sweeping tort reforms in 1987, the employer negligence rule described above was known by the Idaho Legislature. The Legislature chose not to amend I.C. § 72-223(3) when it amended I.C. § 6-803. Nor is there any indication whatsoever from the Idaho Legislature that it intended to alter or amend the Idaho Supreme Court's 50-year-old system of apportionment or employer negligence rule under I.C. § 72-223(3).

"It is assumed that when the Legislature enacts or amends a statute it has full knowledge of the existing judicial decisions and case law of the state." *George W. Watkins Family v. Messenger*, 118 Idaho 537, 540-41, 797 P.2d 1385, 1388-89 (1990) (partially overruled on other grounds). "The Legislature is presumed not to intend to overturn long established principles of

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[30] R., p. 163-64 (para. 15).
[31] R., p. 165 (para. 19).

law **unless an intention to do so plainly appears by express declaration or the language employed admits of no other reasonable construction**." *Id.* (emphasis added). As the Idaho Supreme Court has note:

> As previously noted, the Legislature is presumed to be aware of this Court's earlier decisions. *Druffel*, 136 Idaho at 856, 41 P.3d at 742. Certainly, our Legislature knows how to abrogate decisions from this Court. *See, e.g.*, Act of March 4, 2010, ch. 29, 2010 Idaho Sess. Laws 49, 49-50 (abrogating holding of *Rammell v. Idaho State Dep't of Agric.*, 147 Idaho 415, 422-23, 210 P.3d 523, 530-31 (2009)).
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> *****
>
> This Court will not interpret a statute as abrogating the common law **unless it is evident that was the Legislature's intent**. *Statewide Constr., Inc. v. Pietri*, 150 Idaho 423, 429, 247 P.3d 650, 656 (2011), abrogated on other grounds by *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 265 P.3d 502 (2011). *See also Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 583, 513 P.2d 627, 635 (1973) ("Where the clear implication of a legislative act is to change the common law rule we recognize the modification because the Legislature has the power to abrogate the common law.").

Pioneer Irrigation Dist. v. City of Caldwell, 153 Idaho 593, 601-02, 288 P.3d 810, 818-19 (2012) (emphasis added).

There is no "express declaration" from the Idaho Legislature abrogating this Supreme Court's 50-year-old employer negligence rule under I.C. § 72-223(3). Nor is there any evidence to suggest that the Legislature intended to do so in amending I.C. § 6-803 in 1987. The Commission's Order fails to identify any express declaration or other evidence of intent from the Idaho Legislature requiring the abolishment of the employer negligence rule under Idaho's worker's compensation system. If the Idaho Legislature wanted to change the Supreme Court's well-established employer negligence rule, it easily could have done so in 1987. It did not. The

Commission's Order abolishing the Idaho Supreme Court's employer negligence rule should be overturned on appeal.

Moreover, the purpose of the worker's compensation law in Idaho "was to provide sure and certain relief for injured workers and their dependents." *Hogaboom v. Connidy Mattress,* 107 Idaho 13, 17, 684 P.2d 990, 994 (1984). To fulfill this purpose, sure and certain relief should be provided "regardless of questions of fault and to the exclusion of every other remedy, proceeding or compensation, except as otherwise provided in this Act." *Haldiman v. American Fine Foods*, 117 Idaho 955, 956, 793 P.2d 187, 188 (1990) (emphasis added). In addition to these general rules of statutory construction, when dealing with Idaho worker's compensation laws, the Idaho Supreme Court has consistently adhered to the principle of liberally construing the law in favor of the claimant. *Id.* This liberal construction principle has been applied in several cases to determine whether an employee is entitled to a particular benefit. "In these cases this Court has frequently construed statutes in a manner that favors the award of benefits" *Id.* In *Izaguirre*, the Idaho Supreme Court analyzed Idaho Code §72-223, the very code section at issue in this case, and stated the following rule of statutory construction:

> In determining the meaning of I.C.§ 72-223, we do not confine our analysis solely to subsection (3), because "our duty is to ascertain, if possible, from a reading of the whole act...the purpose and intent of the Legislature and give force and effect thereto.

Izaguirre, 155 Idaho at 234, 308 P. 3d at 934.

The analysis of the employer negligence rule should focus on Idaho worker's compensation law as historically interpreted by the Idaho Supreme Court. If the Supreme Court construes the worker's compensation law in a light most favorable to Maravilla, it has to conclude that the Idaho Legislature chose not to amend I.C. § 72-223(3) or abolish the Supreme Court's employer

negligence rule when amending I.C. § 6-803 in 1987. The Commission failed to follow these rules of statutory construction and came to the wrong conclusion. This Court must reverse the Commission's Order with respect to its rejection of the employer negligence rule.[32]

3. Many inequities are now on the shoulders of the claimants.

This Supreme Court in *Tucker* carefully analyzed whose shoulders the "inequities" of a given scheme would land as it formulated the legal framework for apportioning an employee's award from a third-party tortfeasor. *Tucker*, 100 Idaho at 602, 603 P.2d at 168. The Supreme Court worked through the practical impact of the rule it was establishing.

Maravilla finds it ironic that the Commission specifically stated that "[t]o shift the inequity of joint and several liability from the shoulders of the negligent party to the shoulder of the injured worker would require action in the Legislature as opposed to action by the Court."[33] The irony is that the Commission's Order shifts additional inequities upon the claimant in the absence of any directive from the Idaho Legislature.

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[32] The Commission rejected the Supreme Court's employer negligence rule and in its place effectively adopted the holding of the nearly 40-year-old California case *Associated Construction and Engineering Co. v. Workers Compensation Appeals Board*, 587 P.2d 684 (Cal. 1978), which allowed an employer to obtain a partial subrogation even when the employer's negligence contributes to the employee's injuries. The Commission wrongly adopted this ruling from *Associated Construction*, because that specific ruling was expressly disregarded by the Idaho Supreme Court in *Tucker*, 100 Idaho at 604, 603 P.2d at 170 ("As to that portion of the *Associated* decision relating to the right of the employer to be subrogated to a portion or all of the workmen's compensation benefits dependent upon the extent to which negligence has been assessed against the employer, we find such to be unnecessary to our decision today.") And there is no basis to adopt it now.

[33] R., p. 164.

Maravilla submits that the new partial subrogation claim rule the Commission adopted in its Order clearly places an additional inequity on the shoulders of claimants in Idaho with no rewrite or modification of Idaho Code §72-223. The Commission's ruling in this case is completely contrary to the spirit of the policies of the Idaho worker's compensation law which requires courts to give injured workers sure and certain relief and construe worker's compensation statutes in favor of the award of benefits.

Maravilla asks the Court to look at the inequities that were legislatively placed on the shoulders of injured workers with the abolition of joint and several liability was largely abolished in 1987 by the amendment of I.C. § 6-803(3). Prior to the amendment of that statute, if the employer was concurrently negligent, the injured worker could collect 100 percent of his tort damages from the negligent third-party tortfeasor. Effective with the abolishment of joint and several liability in 1987, the injured worker can now only collect the third party tortfeasor's proportionate share of the liability from a third-party tortfeasor.

The *Tucker* case is illustrative of this point. In *Tucker*, the injured worker was able to collect the difference between the worker's compensation benefits and his negligent employer's proportionate share of the tort damages from the third-party tortfeaser under joint and several liability. Therefore, the judgment against the third-party tortfeasor in *Tucker* totaled:

1.	Total damages for Tucker and his wife	$362,000.00
2.	Less 10% reduction for Tucker's negligence	- $36,200.00
3.	Less worker's compensation benefits paid	- $16,916.50
4.	Net recovery to the Tuckers from third-party tortfeasor	$308,883.50

Adding the value of the worker's compensation benefits received to this Judgment, the Tuckers were able to collect a total value of $325,800. The surety lost its subrogation claim due to the employer's negligence rule. So, Tucker did not have to reimburse the surety from this Judgment.

Today, under several liability, the Tuckers' Judgment against the third-party tortfeasor would have been much less:

1.	Total damages for Tucker and his wife	$362,000.00
2.	Less employer's negligence of 30% (for Tucker's damages only of $350,000)	-$105,000.00
3.	Less Tucker's negligence of 10%	-$36,200.00
4.	Net recovery to the Tuckers from third-party tortfeasor	$220,800.00

Therefore, under several liability, the Tuckers would now only be able to obtain $220,800.00 in the tort Judgment and $16,916.50 in the value of the workers compensation benefits received, for a total value of $237,916.50. When compared to what the Tucker's actually received before the abolition of joint and several liability, this is a loss of $88,083.50 if their claim were litigated today. The injured worker has had this inequity placed on his or her shoulders by the Idaho Legislature as a result of tort reform. The Commission's Order acknowledges this inequity placed upon claimants by tort reform in 1987.

Maravilla requests this Court take this fact into consideration as it decides upon whose shoulders to place the **additional inequity** of the rule adopted by the Commission's Order to allow a negligent employer to receive partial subrogation. Maravilla urges the Supreme Court to take a fresh look at cases like *Tucker* and *Runcorn* in light of the practical burdens placed on the shoulders of claimants after tort reform. Claimants should not have to shoulder all of the inequities. Allowing a partial subrogated claim as advocated by the Commission would require that claimants pay their negligent employers back a portion of their subrogated claim out of their now reduced third party

tort recoveries. This would result in a "double loss" to the claimant without any directive from the Idaho Legislature to do so. The Supreme Court should be concerned with a "double loss" as much as it is with a "double recovery."

This is an inequity that the Idaho Legislature has not placed on the claimants' shoulders through any type of amendment or modification to I.C. § 72-223. Claimants should enjoy sure and certain relief under the Idaho worker's compensation law and not be required to pay back subrogated claims so long as they satisfy their burden of showing that their employer was concurrently negligent causing them harm.

For these reasons, the Commission's Order rejecting the 50-year-old employer negligence rule should be reversed.

4. There is no double recovery.

Maravilla acknowledges that, in *Tucker* and Runcorn, the Idaho Supreme Court was concerned that the injured employee should not be allowed a double recovery. *Tucker*, 100 Idaho at 604, 308 P.3d at 936; *Runcorn*, 107 Idaho at 396; 690 P.2d at 330. Therefore, if a claimant is fortunate enough to obtain a total recovery in excess of 100 percent of the damages in its third-party tortfeasor case by reason of a combination of his worker's compensation benefits paid and verdict or settlement in the third party case, it may be reasonable for a claimant to pay over to the employer that amount of the total combined funds that exceed 100 percent of the damages in the third-party tortfeasor case to reimburse the employer for its subrogated claim. This would ensure that a claimant would never receive a double recovery. Such a circumstance is probably more often than not a theoretical possibility, and not a practical concern.

Accidents in these cases are always complicated situations where multiple people and factors are involved. Claimants often take substantial reductions in their recoveries in these third-party tortfeasor cases because of their employer's negligence (which are easy targets by third-party tortfeasors since they are always the empty chair) or their own comparative fault. Indeed, it is the trial strategy of third-party tortfeasors to put as much fault as possible on the absent employer. This results in less negligence being attributed to the third-party tortfeasor. The injured worker is then required to defend both himself and his absent employer from comparative fault allegations in order to recover the full amount for his injuries. When this Court reaffirms its employer negligence rule, it will not result in a double recovery and will prevent a double loss to the claimant.

V. CONCLUSION

For the reasons discussed above, it is respectfully requested that this Court affirm the Commission's Order with respect to the rejection of Simplot's claim prelusion argument. It is also respectfully requested that the Supreme Court reverse the Commission's Order with respect to its rejection of the well-established employer negligence rule, which should be reaffirmed as eliminating an employer's subrogation under I.C. § 72-223(3) if the employer's negligence contributed to the employee's injuries.

DATED this 12th day of February, 2016.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of February, 2016, I served a true and correct copy of the foregoing document to the following person(s) as follows:

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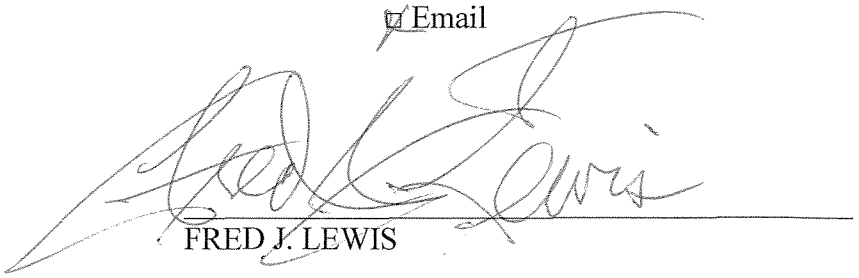

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